

Pebble Project NEPA FEIS Briefing
August 18, 2020

I. Purpose of Briefing:

Ex. 5 Deliberative Process (DP)

II. Bottom Line Up Front:

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III. Background:

1. Table of Major Post DEIS Milestones – Table notes major CWA Section 404 and EIS milestones post-DEIS. Not noted are several rounds of EIS technical meetings with the Corps and cooperating agencies.

Review Timeline	7/1/19	7/26/19	10/24/19	2/6/20	2/28/20	3/12/20	3/26/20	5/28/20	7/24/20	Fall 2020 (Tentative)
404 Process	EPA and FWS submit 3(a) letters	FWS submits 3(b) letter; EPA receives 90-day 3(b) extension	EPA receives 127-day 3(b) extension		EPA receives 90-day 3(b) extension	EPA, USFWS, and USACE begin 404 coordination meetings		Deadline for 3(b) letter, 404 coordination meetings end, EPA ends 404(q) process		USACE target for CWA 404 Permit Decision
NEPA EIS Process	EPA submits 309 letter on Draft EIS			USACE shares PFEIS shared w/ cooperating agencies (45-day review)			EPA submits PFEIS comments to USACE		USACE releases FEIS. Comments due 8/24.	ROD

2. FEIS

- The FEIS identifies Alternative 3 as the applicant's preferred alternative. Alternative 3 includes:
 - Open-pit mine, tailings storage facilities, water management ponds, a mill facility, and other mine site facilities, totaling 8,390-acre footprint at the mine site.
 - Approximately 1.4 billion tons of ore over the mine operating life of 20 years.
 - Mine contact water would be treated and discharged during operations and water discharged from the pit lake following mine closure would require water treatment in perpetuity.
 - An 82-mile road from the mine site to a port facility;
 - A port facility near Diamond Point with a lightering location in Iniskin Bay;
 - A 164-mile natural gas pipeline, which crosses Cook Inlet and terminates at mine site;
 - Concentrate and return water (concentrate filtrate) pipelines; and
 - Power generation facilities located at the mine and the port site.

- Alternative 3 does not include use of an ice-breaking ferry across Lake Iliamna, which is included Alternatives 1a, 1 and 2.

3. CWA 404

- During a twelve-week period from March 12 through May 28, 2020, an interagency team of managers and staff from the Corps, EPA, and USFWS met weekly to discuss issues regarding the project's compliance with the CWA Section 404(b)(1) Guidelines. Key findings and areas of agreement include:

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- EPA ended the CWA 404(q) process in its letter dated May 28, 2020.

4. State Actions Relevant to Permit

- Alaska Department of Environmental Conservation's public comment period for the CWA 401 State Water Quality certification of the CWA 404 permit runs from 7/24/2020 to 8/24/2020. ADEC's certification decision will be included in the ROD.
- Numerous State of Alaska permits would be required for the Project. PLP has stated that it would start the state permitting process when the NEPA process and Corps decision is complete.
- Major state permits and approvals that would be required: Integrated Waste Management Permit, Alaska Pollutant Discharge Elimination System permits, Air Quality Permit, Reclamation and Closure Plan Approval, Fish Habitat permits, Dam Safety certificates.

5. Litigation Status

- On April 17, 2020 the U.S. District Court for Alaska dismissed the Bristol Bay litigation, finding that EPA's decision to withdraw the 2014 Proposed Determination was committed to agency discretion by law. The court found that the decision was akin to a discretionary enforcement decision that involves a balancing of factors uniquely in the agency's expertise (resources, etc), and that neither the statute nor the regulations provided a standard for reviewing our withdrawal.
- One plaintiff, Trout Unlimited, appealed to the Ninth Circuit.
- The appeal was fully briefed on July 29, 2020.
- Oral argument is scheduled for August 12, 2020.
- Plaintiffs have asked for a decision by September 1, 2020, but the court is not bound by this request.

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